

## REMARKS

### Statutory Double Patenting

Claims 1-18 stand rejected under 35 U.S.C. § 101 on the ground of statutory double patenting based on the allowed claims in Bodin, *et al.* (U.S. Patent No. 7,151,969, Application No. 10/607,486). Statutory double-patenting exists only if the claims of the present application and the claims in Bodin describe identical subject matter. *See* MPEP § 804IIA. A reliable test for statutory double patenting is whether a claim in the present application could be literally infringed without literally infringing a corresponding claim in Bodin. *Id.* (citing *In re Vogel*, 422 F.2d 438, 441 (C.C.P.A.1970)). If a claim in the present application could be literally infringed without literally infringing a corresponding claim in Bodin, then statutory double patenting does not exist. As demonstrated below, independent claim 1 of the present application could be infringed without literally infringing independence claim 1 of Bodin, statutory double patenting does not exist, and the rejections should be withdrawn.

To infringe independent claim 1 of the present application without literally infringing independence claim 1 of Bodin, there must exist at least one element or limitation in Bodin's claim 1 that is not recited in claim 1 of the present application. A comparison of claim 1 of the present application and Bodin's claim 1 is sets forth in the following claim comparison table:

CLAIM COMPARISON TABLE	
Claim 1 of the Present Application	Claim 1 of Bodin
1. A method for administering devices in a network, the method comprising:	1. A method for administering devices, the method comprising:
creating a user metric vector comprising a	creating a user metric vector comprising a

plurality of disparate user metrics;	plurality of disparate user metrics;
creating a user metric space comprising a plurality of metric ranges;	creating a user metric space comprising a plurality of metric ranges;
determining whether the user metric vector is outside the user metric space;	determining whether the user metric vector is outside the user metric space;
if the user metric vector is outside a user metric space, identifying an action in dependence upon the user metric vector;	
determining whether the action is allowed; and	
if the action is allowed, executing the action.	
	if the user metric vector is outside a user metric space, creating, in dependence upon the user metric vector, a dynamic action list;
	identifying at least one action in the dynamic action list;
	executing the action; and
	determining whether a value of a user metric of the user metric vector that was outside a metric range of the user metric space before executing the action is outside the metric range after executing the action.

The claim comparison table above demonstrates that in fact there are four claim elements in Bodin's claim 1 that would not literally be infringed if claim 1 of the present

application were infringed. Specifically, claim 1 of Bodin recites the following elements and limitations that are not included in claim 1 of the present application:

- if the user metric vector is outside a user metric space, creating, in dependence upon the user metric vector, a dynamic action list;
- identifying at least one action in the dynamic action list;
- executing the action; and
- determining whether a value of a user metric of the user metric vector that was outside a metric range of the user metric space before executing the action is outside the metric range after executing the action.

Because claim 1 of Bodin includes four claim elements with limitations that would not be literally infringed even if claim 1 of the present application were infringed, statutory double patenting does not exist between claims of the present application and the claims in Bodin. Applicants respectfully traverse the statutory double patenting rejections and request that the rejections be withdrawn.

### **Non-Statutory Double Patenting**

Claims 1-18 are rejected on the ground of non-statutory double patenting over the claims in Application No. 10/418,596, Application No. 10/418,612, Application No. 10/418,689, Application No. 10/455,174, Application No. 10/455,176, Application No.10/607,461, and Application No. 10/651,724. In response, Applicants herewith submit seven Terminal Disclaimers in compliance with 37 C.F.R. § 1.321 for the present application to cure the double patenting rejections in the present application.

### **Claim Rejections – 35 U.S.C. § 102 Over Ting**

Claims 1-18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ting (U.S. Publication No. 2002/0174348). To anticipate claims 1-18 under 35 U.S.C. § 102(e), two basic requirements must be met. The first requirement of anticipation is that Ting must disclose each and every element and limitation as set forth in the Applicants' claims. The second requirement of anticipation is that Ting must enable Applicants' claims. Ting does not meet either requirement and therefore does not anticipate Applicants' claims.

#### **Ting Does Not Disclose Each and Every Element Of The Claims Of The Present Application**

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Independent claim 1 of the present application recites:

1. A method for administering devices in a network, the method comprising:
  - creating a user metric vector comprising a plurality of disparate user metrics;
  - creating a user metric space comprising a plurality of metric ranges;
  - determining whether the user metric vector is outside the user metric space;
  - if the user metric vector is outside a user metric space, identifying an action in dependence upon the user metric vector;

determining whether the action is allowed; and

if the action is allowed, executing the action.

As explained in more detail below, Ting does not disclose each and every element of claim 1, and Ting therefore cannot be said to anticipate the claims of the present application within the meaning of 35 U.S.C. § 102(e).

**Ting Does Not Disclose Creating A User Metric Vector  
Comprising A Plurality Of Disparate User Metrics**

The Office Action takes the position that Ting at paragraphs 0032-0033, discloses the first element of claim 1: creating a user metric vector comprising a plurality of disparate user metrics. Applicants respectfully note in response, however, that what Ting at paragraphs 0032-0033, in fact discloses is:

[0032] The storage module 135 can include an electronic vault module 144, in which user credentials (e.g., login accounts, URL/password combinations, digital certificates and the like) for an associated authenticated user are stored. The modules throughout the specification are implemented as one or more software programs and/or hardware devices (e.g., ASIC, FPGA, processor, memory, storage and the like). For clarity, FIG. 1 depicts server node 108 as a single server. It is to be understood, however, that the server node 108 can also be implemented, for example, distributed on portions of several (i.e., more than two) servers.

[0033] The client node 112 can be any computing device (e.g., a personal computer, set top box, wireless mobile phone, handheld device, personal digital assistant, kiosk, etc) used to provide a user interface to access the server 108. The client 112 includes an agent module 148. The client agent module 148 can be implemented, for example, as a NETSCAPE plug-in or an ACTIVEX control. The agent module 148 is configured to interface with a strong authentication input device 160 (e.g., a fingerprint scanner, a retina scanner, a thermal imager, a skin spectrometer, a voice print analyzer, USB or smart card reader, one-time password generators that compute a unique password, a digital camera and the like) and the server 108. The client agent 148 allows an embedded (e.g., html) object within a network browser on the client 112 to control the input device 160 and

receive a candidate set of biometric data associated with the user 170. In one embodiment, because the agent module 148 interfaces with the input device 160, the agent module 148 runs as native code on the client 112. For example, ACTIVEX controls components or CAB files that are signed can be downloaded and installed within the Windows operating system without any user involvement. The downloaded agent module 148 can optionally include an instance 140b of a task set 140. Preferably, the optional instance 140b includes those actions/tasks that the agent module 148 performs each time the network browser initializes the agent module 148. For example, the client agent 148 can be configured to retrieve a candidate set of biometric data from the user 170 and to transmit the retrieved candidate set of biometric data to the server 108 for authentication each time it is initialized. As such, the optional task set 140b includes these tasks of retrieving and transmitting within its set of tasks. Alternatively, the task set 140b may originate with the client 112 or may be provided by the user 170.

That is, Ting at paragraphs 0032-0033, discloses authenticating a user based upon a set of biometric data received from a user. Ting's authentication of a user based upon the user's biometric data, however, does not disclose creating a user metric vector comprising a plurality of disparate user metrics as claimed in the present application because Ting's set of biometric data is not a user metric as claimed in the present application. In the original specification at page 17, lines 4-12, Applicants describe a user metric stating:

A "user metric" is a data structure representing an indication of user condition. In many examples of methods for administering devices in accordance with the present invention, a user metric is implemented as a data structure, class, or object that includes a userID field, a metricID field, and a metric value field. A typical userID field identifies the user whose indication of condition is represented by the metric. A typical metricID field identifies the quantifiable aspect of user condition the metric represents, such as, for example, blood pressure, heart rate, location, or galvanic skin response. A typical metric value field stores a quantity measuring the aspect of a user's condition.

That is, a user metric represents an indication of a user's condition that varies with time such as, for example, blood pressure, heart rate, location, or galvanic skin response. In contrast, Ting's biometric data used for authentication represents a static, permanent user characteristic that does not change with time because the ability to authenticate a user based on such biometric data requires that the data be unique to the individual and static

so as provide reliable means of authentication. Because Ting's biometric data does not disclose a user metric, Ting does not disclose the first element of claim 1. Because Ting does not disclose each and every element and limitation of Applicants' claims, Ting does not anticipate Applicants' claims, and the rejections under 35 U.S.C. § 102(e) should be withdrawn.

In addition, Ting's authentication of a user based upon the user's biometric data does not disclose creating a user metric vector comprising a plurality of disparate user metrics as claimed in the present application because Ting's biometric data is not comprised in a metric vector. In fact, nowhere in the entire reference does Ting ever even mention a 'vector.' Because Ting does not disclose a user metric vector, Ting does not disclose the first element of claim 1. Because Ting does not disclose each and every element and limitation of Applicants' claims, Ting does not anticipate Applicants' claims, and the rejections under 35 U.S.C. § 102(e) should be withdrawn.

**Ting Does Not Disclose Creating A User Metric Space  
Comprising A Plurality Of Metric Ranges**

The Office Action takes the position that Ting at paragraphs 0033 and 0035, discloses the second element of claim 1: creating a user metric space comprising a plurality of metric ranges. Applicants respectfully note in response, however, that what Ting at paragraph 0033 in fact discloses is:

[0033] The client node 112 can be any computing device (e.g., a personal computer, set top box, wireless mobile phone, handheld device, personal digital assistant, kiosk, etc) used to provide a user interface to access the server 108. The client 112 includes an agent module 148. The client agent module 148 can be implemented, for example, as a NETSCAPE plug-in or an ACTIVEX control. The agent module 148 is configured to interface with a strong authentication input device 160 (e.g., a fingerprint scanner, a retina scanner, a thermal imager, a skin spectrometer, a voice print analyzer, USB or smart card reader, one-time password generators that compute a unique password, a digital camera and the like) and the server 108. The client agent 148 allows an embedded (e.g., html) object within a network browser on the client 112 to control the input device 160 and receive a candidate set of biometric data associated with the user 170. In

one embodiment, because the agent module 148 interfaces with the input device 160, the agent module 148 runs as native code on the client 112. For example, ACTIVEX controls components or CAB files that are signed can be downloaded and installed within the Windows operating system without any user involvement. The downloaded agent module 148 can optionally include an instance 140b of a task set 140. Preferably, the optional instance 140b includes those actions/tasks that the agent module 148 performs each time the network browser initializes the agent module 148. For example, the client agent 148 can be configured to retrieve a candidate set of biometric data from the user 170 and to transmit the retrieved candidate set of biometric data to the server 108 for authentication each time it is initialized. As such, the optional task set 140b includes these tasks of retrieving and transmitting within its set of tasks. Alternatively, the task set 140b may originate with the client 112 or may be provided by the user 170.

In addition, what Ting at paragraph 0035, in fact discloses is:

[0035] To use the system 100, a user 170, also referred to as a subscriber, registers that user's biometric data with the system 100. The biometric data can include, for example, data associated with the individual's fingerprint(s), facial characteristics, voice and the like. The system 100 stores a set of biometric data associated with the user 170 in the storage module 135, for example in the template 136, in the electronic vault 144. In one embodiment, the biometric data is stored using an alias (e.g., a unique identifier with no personal or other type of information that can identify an individual), so that if the security of the storage module 135 is compromised, the biometric data cannot be associated with a particular individual. Other strong authentication data can also be registered. For example, the user can insert a smart card into a reader, or enter a local pin and/or use the secret key (of a public/private key combination) to sign a challenge generated by the server 108 and return it. In the latter case, the server 108 validates the signature of the response against the public key associated with the user (stored as a credential for the associated subscriber) in order to validate his/her identity.

That is, Ting at paragraphs 0033 and 0035 discloses registering a user's biometric data with an authentication system for use in subsequent user authentications. Ting's registering a user's biometric data with an authentication system, however, does not disclose creating a user metric space comprising a plurality of metric ranges as claimed in the present application because Ting at this point does not discuss metric ranges or a metric space. In fact, nowhere in the entire reference does Ting ever even mention the



term ‘space’ or ‘metric space.’ Furthermore, a metric range is a range of values for a corresponding user metric. *See* Original Specification at page 34, lines 20-23. As discussed above, however, Ting does not disclose user metrics and therefore cannot disclose metric ranges. Because Ting does not disclose each and every element and limitation of Applicants’ claims, Ting does not anticipate Applicants’ claims, and the rejections under 35 U.S.C. § 102(e) should be withdrawn.

**Ting Does Not Disclose Determining Whether The  
User Metric Vector Is Outside The User Metric Space**

The Office Action takes the position that Ting at paragraphs 0031-0035, 0042-0043, and 0046-0047 discloses the third element of claim 1: determining whether the user metric vector is outside the user metric space. Applicants respectfully note in response, however, that what Ting at paragraphs 0031-0035 in fact discloses is authenticating a user based upon a set of biometric data currently received from a user and previously registered biometric data associated with the user. In addition, what Ting at paragraph 0042-0043, in fact discloses is determining whether biometric data currently received from a user matches previously registered biometric data associated with the user by determining whether the probability that they come from the same individual is above a certain predetermined threshold. Furthermore, what Ting at paragraph 0046-0047, in fact discloses is determining whether biometric data currently received from a user matches previously registered biometric data associated with the user by filtering the biometric data currently received from the user and comparing the filtered biometric data with the previously registered biometric data. Ting’s authentication of a user based upon a set of biometric data currently received from a user and previously registered biometric data associated with the user, however, does not disclose determining whether the user metric vector is outside the user metric space as claimed in the present application because Ting at this point does not disclose a metric vector or a metric space. In fact, nowhere in the entire reference does Ting ever even mention the terms ‘vector,’ ‘user metric vector,’ ‘space,’ or ‘user metric space.’ Furthermore, as demonstrated above, a user metric vector is comprised of a plurality of disparate user metrics. As explained above, Ting’s biometric data is not a user metric as claimed in the present application. Without more,

Ting at paragraphs 0031-0035, 0042-0043, and 0046-0047 does not disclose the third element of claim 1. Because Ting does not disclose each and every element and limitation of Applicants' claims, Ting does not anticipate Applicants' claims, and the rejections under 35 U.S.C. § 102(e) should be withdrawn.

**Ting Does Not Disclose Identifying An Action In  
Dependence Upon The User Metric Vector If The  
User Metric Vector Is Outside A User Metric Space**

The Office Action takes the position that Ting at paragraphs 0042-0043 and 0046-0047 discloses the fourth element of claim 1: if the user metric vector is outside a user metric space, identifying an action in dependence upon the user metric vector. Applicants respectfully note in response, however, that what Ting at paragraphs 0042-0043 in fact discloses is determining whether biometric data currently received from a user matches previously registered biometric data associated with the user by determining whether the probability that they come from the same individual is above a certain predetermined threshold. In addition, what Ting at paragraph 0046-0047, in fact discloses is determining whether biometric data currently received from a user matches previously registered biometric data associated with the user by filtering the biometric data currently received from the user and comparing the filtered biometric data with the previously registered biometric data. Ting's authentication of a user based upon a set of biometric data currently received from a user and previously registered biometric data associated with the user, however, does not disclose identifying an action in dependence upon the user metric vector if the user metric vector is outside a user metric space as claimed in the present application because Ting at this point does not disclose a metric vector or a metric space. In fact, nowhere in the entire reference does Ting ever even mention the terms 'vector,' 'user metric vector,' 'space,' or 'user metric space.' Furthermore, as demonstrated above, a user metric vector is comprised of a plurality of disparate user metrics. As explained above, Ting's biometric data is not a user metric as claimed in the present application. Without more, Ting at paragraphs 0042-0043 and 0046-0047 does not disclose the fourth element of claim 1. Because Ting does not disclose each and

every element and limitation of Applicants' claims, Ting does not anticipate Applicants' claims, and the rejections under 35 U.S.C. § 102(e) should be withdrawn.

**Ting Does Not Disclose Determining Whether The Action Is Allowed  
And Executing The Action If The Action Is Allowed**

The Office Action takes the position that Ting at paragraphs 0049 and 0050, discloses the fifth and sixth elements of claim 1: determining whether the action is allowed and executing the action if the action is allowed. Applicants respectfully note in response, however, that what Ting at paragraphs 0049 and 0050 in fact discloses is using a trusted communications channel to customize a client for an authenticated user or to control what a server downloads to a client. Ting's trusted communications channel that is used to customize a client for an authenticated user or to control what a server downloads to a client, however, does not disclose determining whether the action is allowed because Ting's client downloads that are controlled by the trusted communications channel does not disclose an action as claimed in the present application. As demonstrated above in the listing of claim 1, an action as claimed in the present application is identified in dependence upon a user metric vector comprised of a plurality of disparate user metrics. Ting, however, does not disclose that Ting's client downloads are identified in dependence upon a user metric vector comprised of a plurality of disparate user metrics. Furthermore, as explained above, Ting discloses neither user metrics nor a user metric vector. Ting therefore cannot disclose identifying an action in dependence upon a user metric vector and cannot disclose determining whether such an action is allowed and executing such an action if the action is allowed. Without more, Ting does not disclose the fifth and sixth elements of claim 1. Because Ting does not disclose each and every element and limitation of Applicants' claims, Ting does not anticipate Applicants' claims, and the rejections under 35 U.S.C. § 102(e) should be withdrawn.

**Ting Does Not Enable Each and Every Element  
Of The Claims Of The Present Application**

Not only must Ting disclose each and every element of the claims of the present application within the meaning of *Verdegaal* in order to anticipate Applicants' claims,

but also Ting must be an enabling disclosure of each and every element of the claims of the present application within the meaning of *In re Hoeksema*. In *Hoeksema*, the claims were rejected because an earlier patent disclosed a structural similarity to the Appellant's chemical compound. The court in *Hoeksema* stated: "We think it is sound law, consistent with the public policy underlying our patent law, that before any publication can amount to a statutory bar to the grant of a patent, its disclosure must be such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention." *In re Hoeksema*, 399 F.2d 269, 273, 158 USPQ 596, 600 (CCPA 1968). The meaning of *Hoeksema* for the present case is that unless Ting places Applicants' claims in the possession of a person of ordinary skill in the art, Ting is legally insufficient to anticipate Applicants' claims under 35 U.S.C. § 102(e). As explained above, Ting does not disclose each and every element and limitation of independent claim 1 of the present application. Because Ting does not disclose each and every element and limitation of the independent claims, Ting cannot possibly place the elements and limitations of independent claim 1 in the possession of a person of ordinary skill in the art. Ting cannot, therefore, anticipate claim 1 of the present application.

### **Relations Among Claims**

Independent claims 7 and 13 are system and computer program product claims, respectively, for administering devices in a network corresponding to independent method claim 1 that include "means for" and "means, recorded on [a] recording medium, for" administering devices in a network. Claim 1 is allowable for the reasons set forth above. Claims 7 and 13 are allowable for the same reasons that claim 1 is allowable. The rejections of claims 7 and 13 therefore should be withdrawn, and claims 7 and 13 should be allowed.

Claims 2-6, 8-12, and 14-18 depend respectively from independent claims 1, 7, and 13. Each dependent claim includes all of the limitations of the independent claim from which it depends. Because Ting does not disclose or enable each and every element of the

independent claims, Ting does not disclose or enable each and every element of the dependent claims of the present application. As such, the rejections of claims 2-6, 8-12, and 14-18 should also be withdrawn, and the claims should be allowed.

### **Conclusion**

Claims 1-18 stand rejected on the grounds of statutory double patenting over the allowed claims in Bodin. As explained above, however, the claims of Bodin do not recite each and every element of Applicants' claims and therefore, do not literally infringe Applicants' claims by claiming identical subject matter. The rejections of claims 1-18 should therefore be withdrawn. Applicants respectfully request reconsideration of claims 1-18.

Claims 1-18 are rejected on the ground of non-statutory double patenting over the claims in Application No. 10/418,596, Application No. 10/418,612, Application No. 10/418,689, Application No. 10/455,174, Application No. 10/455,176, Application No. 10/607,461, and Application No. 10/651,724. In response, Applicants herewith submit seven Terminal Disclaimers in compliance with 37 C.F.R. § 1.321 for the present application to cure the double patenting rejections in the present application.

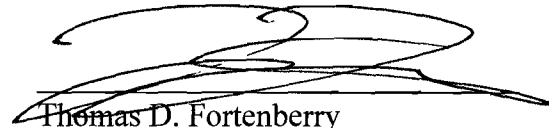
Claims 1-18 stand rejected under 35 U.S.C. § 102 as being anticipated by Ting. For the reasons set forth above, Ting does not disclose each and every element of Applicants' claims and does not enable Applicants' claims. Ting therefore does not anticipate Applicants' claims. Claims 1-18 are therefore patentable and should be allowed. Applicants respectfully request reconsideration of claims 1-18.

The Commission is hereby authorized to charge or credit Deposit Account No. 09-0447 for any fees required or overpaid.

Respectfully submitted,

Date: July 31, 2007

By:

A handwritten signature in black ink, appearing to read "Thomas D. Fortenberry", written over a horizontal line.

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